

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Conservation Law Foundation, Inc.	)	
	)	
Plaintiff,	)	Case No. 1:12-cv-10773-GAO
	)	
v.	)	
	)	Proposed Consent Decree
Sone Alloys, Inc.	)	
	)	
Defendant.	)	
	)	

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action on April 30, 2012, against Defendants Sone Alloys, Inc. ("Sone Alloys"), and Joseph Enos & Sons Trust, alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, Joseph Enos & Sons Trust was dismissed from this action on March 6, 2014;

WHEREAS, Sone Alloys owns and operates a scrap metal recycling facility located at 18-20 Dana Street, Taunton, MA 02780 (the "Facility");

WHEREAS, after this action was initiated by the filing of CLF's complaint, Sone Alloys developed a Stormwater Pollution Prevention Plan ("SWPPP") for the Facility, implemented a suite of best management practices and control measures at the Facility, and applied for and obtained a stormwater permit for the Facility under the NPDES program;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, CLF has alleged, in its complaint (the "Complaint") and in a letter (the "Notice Letter") dated February 28, 2012, sent to Sone Alloys and others, that Sone Alloys has violated and continues to violate Section 505 of the Federal Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1365(a); and

WHEREAS, CLF and Sone Alloys (collectively, "the Parties" or individually "Party") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Sone Alloys of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Sone Alloys facility, located at 18–20 Dana Street, Taunton, MA 02780, and in the Taunton River watershed, which are located within this judicial district.

### **II. COMPLIANCE PROGRAM**

3. Sone Alloys shall operate the Facility in compliance with the SWPPP (or any subsequently amended version(s) of the SWPPP) and the most recently issued Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity including NPDES Permit MAR05E944 (“MSGP”). The MSGP, as it may be updated or reissued from time to time, is incorporated into this Consent Decree by reference.

4. Sone Alloys shall operate in compliance with the Clean Water Act.

### **III. MONITORING PROGRAM FOR MSGP COMPLIANCE**

5. Sone Alloys shall comply with all monitoring, inspection, and reporting requirements of the MSGP including, but not limited to, those of Part 4.3. Sone Alloys shall, during the term of this Decree, send a copy of each monitoring, inspection and/or sampling report to CLF no later than three (3) days after receipt.

6. Sone Alloys will not exceed in its actual stormwater discharge the sector-specific benchmarks identified in the MSGP for the scrap recycling sector (i.e., chemical oxygen demand, total suspended solids, aluminum, copper, iron, lead, and zinc) at Part 8.N of the MSGP.

7. During the term of this Decree, CLF, through representatives, may conduct up to two (2) yearly site inspections at the Facility to verify compliance with the Decree. The site inspections shall occur during normal business hours. During the site inspections, CLF representatives may collect samples of actual stormwater discharges and take MSGP-related photos at the Facility. CLF’s monitoring shall cease upon final payment

but shall not be less than three (3) years from the date of the entry by the Court of this Decree.

8. During the life of the Decree, Sone Alloys shall copy CLF on all documents related to water quality or CWA compliance regarding the Facility submitted to the EPA. Such documents shall be provided to CLF concurrently as they are sent to the agency.

#### **IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

9. Sone Alloys shall make a payment of thirty-seven thousand five hundred dollars (\$37,500) to the Taunton River Watershed Alliance for environmental restoration of or other benefit to the Taunton River watershed. Sone Alloys shall notify CLF in writing when the payment is made and provide a copy of the check. The SEP payment shall be made according to the following schedule:

- a. \$17,000 on or before January 2, 2015
- b. \$20,500 on or before September 30, 2020

#### **V. LIQUIDATED ATTORNEY FEES AND COSTS**

10. Sone Alloys shall pay to CLF a sum of one hundred seventy-nine thousand five hundred dollars (\$179,500) as full and complete satisfaction of CLF's claim for attorneys' fees and costs in this matter. The liquidated fees and costs payment shall be made according to the following schedule:

- a. \$33,000 on or before September 30, 2015
- b. \$33,000 on or before September 30, 2016
- c. \$33,000 on or before October 2, 2017
- d. \$33,000 on or before October 1, 2018
- e. \$33,000 on or before September 30, 2019
- f. \$14,500 on or before September 30, 2020

11. In the event that any payment owed by Sone Alloys under the Decree is not made on or before the due date, Sone Alloys shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Sone Alloys shall pay to CLF liquidated attorney fees of one hundred dollars (\$100) for every day that the payment is late.

#### **V. EFFECT OF DECREE**

12. CLF covenants not to sue and releases Sone Alloys (and its parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the Clean Water Act at the Facility occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint.

13. Sone Alloys releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action.

14. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Sone Alloys shall constitute or be construed as an admission or acknowledgment by Sone Alloys of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Sone Alloys retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Sone Alloys of any liability, or an admission of violation of any law, by Sone Alloys or by its officers, directors, employees, agents, successors, or assigns.

15. CLF does not, by consent to the Decree, warrant or aver in any manner that Sone Alloys' compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Sone Alloys to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

16. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties.

17. All payments pursuant to this Decree shall be made in form of a certified bank check.

18. Any notice required or permitted under this Decree shall be in writing and sent to the respective addresses shown below in the signature line.

19. [REDACTED]

20. This Decree shall remain in effect if Sone Alloys relocates the Facility to a different location.

21. Sections I, IV, V, VI, and VII of this Decree shall remain in effect if Sone Alloys ceases to be the operator of the Facility, regardless of whether the Facility continues to operate or not.

#### **VI. REVIEW AND TERM OF DECREE**

22. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the

proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

23. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate six (6) years from when it is entered by the Court. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree. Termination may occur at any time after four (4) years from the date of the entry by the Court of this Decree if all payments have been made by or after that date.

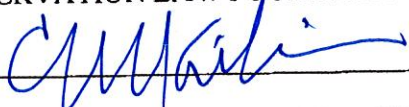
## VII. MODIFICATION AND ENFORCEMENT OF DECREE

24. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

25. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

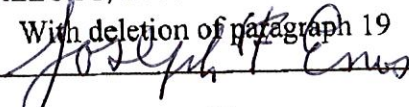
26. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

### CONSERVATION LAW FOUNDATION

By:  Date: 9/9/14

Christopher M. Kilian, VP and Director  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602

### SONE ALLOYS, INC.

By:  Date: 09/08/2014

With deletion of paragraph 19  
Joseph Enos, President  
Sone Alloys, Inc.  
18-20 Dana Street  
Taunton, MA 02780

ENTERED and DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

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Honorable George A. O'Toole, Jr.  
United States District Judge